in order to divest himself of the legal and equitable title to the shares in question.

The respondent relies upon Exhibit G, a letter dated the 6th of March, 1959, to his solicitors from the Deputy Controller of Foreign Exchange, which reads as follows:—

"OFFICE OF
Controller of Foreign Exchange,
P.O. Box 52, Singapore.
6th March, 1959.

No. E.C. 10160.

Messrs. Laycock & Ong,
Nunes Building,
Malacca Street,
Singapore, 1.

Sirs,

Estate of Lee Phee Soo deceased
Estate of Lee Eng Jin deceased

With reference to your letter (N/TWO/GO) of 27th February, I have to say that the Finance Regulations. 1946, were in force at the time the late Lee Phee Soo disposed of 911 shares in Lee Rubber Co. Ltd. by gift to his two sons.

An examination of the Control's files shows that approvals were given for the transfer of the shares as follows:—

(1) 16.9.52 456 Shares to Lee Seng Kee
(2) 11.5.57 455 Shares to Lee Seng Chin

The Solicitors concerned were respectively Messrs. Wee Swee Teow & Co. and Messrs. Braddell Bros.

I have the honour to be,
Sirs,
Your obedient servant,

Sd. (F. S. Overton)
Deputy Controller of Foreign Exchange."

There was some argument before the learned Judge as to whether the Controller's approvals related to the transfers which are the subject matter of the suit, but I see no reason to disagree with the learned Judge's conclusion that the approvals did relate to the relevant transfers and purported to be a permission, authorisation or consent under regulation 4(2) of the Finance Regulations to the transfers made by the intestate on the 28th of June 1946.

That being so, counsel for the respondent relies on the two cases of *In re Rose.*[1] & [2] In both those cases the *ratio decidendi* appears to have been that as between the donor and donee the equitable ownership in the shares passes as soon as the donor has done all that has to be done by him.

The distinction in the present case, to my mind, is that it cannot fairly be said that the intestate has done all that was in his power to perfect the gift. He had admittedly failed to obtain, or even ask for, the necessary permission of the Controller.

This failure might, it seems to me, arise from three causes. First, that the intestate was ignorant of the necessity for any such permission; secondly that, though being aware of the necessity for obtaining permission, he carelessly omitted to take the necessary steps to obtain it; thirdly, that he deliberately refrained from taking the necessary steps to obtain permission, so as to reserve for himself a *locus poenitentiae*; in other words, that he deliberately refrained from perfecting the gift.

Now, from whichever of these causes the intestate's omission to apply for the Controller's permission originated, it would seem that it cannot be said that the intestate had done all that was required of him in order to perfect the gifts. That being so, I consider, as learned counsel for the appellant contends, that regulation 4(2) cannot be invoked to validate a transaction of the kind in question which was admittedly incomplete (within the tests recognised in *Fry's case* [3] and the two *Roses' cases*) at the date of the death of the intestate.

For these reasons I am of opinion that the answer to the first question in the special case should have been in the affirmative; the answer to the second question should have been in the negative; and the answer to the third question should have been in the affirmative.

The appeal therefore must be allowed and the judgment of the Court below set aside, and the three questions posed in the Special Case answered as above.

Tan Ah Tah J.: I agree.

Chua J.: I agree.

[After argument, the following order was made as to costs:—

The costs of the proceedings of both parties both here and below will be taxed on the higher scale as between solicitor and client and paid out of the estate of the intestate.]

Appeal allowed.

Solicitors: *Laycock & Ong; Eber & Tan.*

THYE LAM & CO. v. THE EASTERN SHIPPING CORPN. LTD.

[O. C. J. (Rigby J.) August 24, 1959]

[Penang — Civil Suit No. 235 of 1957]

Carriage of Goods by Sea — Admission of liability by agent — Repudiation by principals — Estoppel — Plea of limitation under Article III rule 6 of Hague Rules.

Practice — Determination of preliminary point of law before trial — R.S.C. 1957 O.25 r.2.

Limitation under Hague Rules — Threat of legal proceedings — Failure to enforce — Protection of right of action.

The plaintiffs claimed against the defendants for damages for breach of contract and/or duty in and about the carriage of goods by sea. Under the terms of a bill of lading dated December 25, 1955, the defendants received on board their vessel "State of Madras" at Madras, 1,500 bags of rice for delivery to the plaintiffs at Penang. The plaintiffs claimed that there was a short delivery of 283 bags. The bill of lading expressly provided that it was made subject to the Indian Carriage of Goods by Sea Act, 1925, and the schedule thereto, which incorporates the Hague Rules which provide in Article III rule 6 that: "In any event the carrier and the ship shall be discharged from all liability in respect

of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered." Proceedings were instituted more than a year after the goods had been delivered.

The plaintiffs sought to rely on the contents of a letter dated April 5, 1956 written to them by the defendants' Penang accredited agent which confirmed "that the said 283 bags were actually short-landed". After further unfruitful correspondence with the defendants, the plaintiffs on August 20, 1956 threatened that they "will commence proceedings unless the claim is settled within two weeks from date hereof", to which the defendants replied stating that they had already advised the plaintiff that investigations regarding this "heavy short-landing" were in progress and that they would be advised about the outcome in due course. The letter concluded with: ". . . . . if you still intend taking any legal action it will be entirely at your risk and cost." On August 12, 1957 the plaintiffs again wrote to the defendants' agents saying that unless payment was made within seven days they would commence legal proceedings, and on September 21, the plaintiffs' solicitors received a reply from the defendants' solicitors denying liability and alleging that the missing bags had never, in fact, been shipped at Madras and that a fraud had been practised by the shippers on the shipping company. The letter further stated that in the event of the plaintiffs' solicitors instituting proceedings against the defendants, they were instructed to plead limitation, as ". . . . . more than twelve months have elapsed since the arrival at Penang of the 'State of Madras' or the date when the goods should have been delivered."

The matter came before the Court under O. 25 r. 2 of the Rules of the Supreme Court, 1957, for the determination of the preliminary point of law raised by the defendants, in their pleadings, that the plaintiffs claim was barred by limitation of time in that the suit was not instituted within one year from the date when the cause of action arose.

Held: the plea of limitation must succeed, as the suit was not instituted within the period prescribed by the Hague Rules incorporated in the Indian Carriage of Goods by Sea Act, 1925.

[**Editorial Note:** The provisions of the Indian Carriage of Goods by Sea Act, 1925 are identical to those of the Federation Carriage of Goods by Sea Ordinance, 1950 and the Singapore Carriage of Goods by Sea Ordinance (Cap. 173).]

CIVIL SUIT.

R. D. Hume (*Lee Thean-Chu* with him) for the plaintiff.

Eusoffe Abdoolcader for the defendants.

Cur. Adv. Vult.

Rigby J.: This matter comes before me, by consent of both parties, for the determination of a preliminary point of law raised by the defendant Corporation, in its pleadings, that the plaintiff Company's claim is barred by limitation of time in that the Suit was not instituted within one year from the date when the cause of action arose.

The plaintiffs' claim, as endorsed upon the Writ of Summons, is against the defendants as owners of the steamship or vessel "State of Madras" for damages for breach of contract and/or duty in and about the carriage of goods by sea.

Under the terms of a Bill of Lading dated the 25th December, 1955, the defendants received on board their vessel "State of Madras" at the port of Madras, in India, 1,500 bags of rice for delivery to the plaintiffs at the port of Penang.

The plaintiffs claim that there was a short-delivery of 283 bags of rice.

The Bill of Lading expressly provides that it is made subject to the Indian Carriage of Goods by Sea Act, 1925, and the Schedule thereto. That Act conforms with and gives effect to the principles recognised and accepted at the International Conference on Maritime Law held in 1922 for the unification of certain rules of law relating to bills of lading. Those principles are known as the "Hague Rules". Article III rule 6 of the Schedule to that Act relates to the procedure to be followed by the shipper or receiver in cases where there is a claim for loss or damage to the goods. It further provides that:—

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."

Identical provisions are to be found in the English Carriage of Goods by Sea Act, 1924, and the Malayan Carriage of Goods by Sea Ordinance, 1950.

In addition to the express reference in the Bill of Lading to the application thereto of the Indian Carriage of Goods by Sea Act, and the Schedule, to the contract, Clause 22 of the Bill of Lading repeats in identical terms the provision contained in Article III rule 6 quoted above.

The relevant dates for consideration are:—

25.12.55 - - - - The Bill of Lading was signed;
1.1.56 - - - - The due delivery date;
23.11.57 - - - - Issue of the Writ of Summons.

It is not disputed that proceedings were instituted more than a year after the goods had been delivered. The plaintiffs, however, by their pleadings seek to rely on the contents of a letter dated the 5th April, 1956, written to the plaintiffs by one, C. K. Joshi, the defendants' duly accredited agent in Penang. The letter reads as follows:—

"Dear Sirs,

TL. 283 Bags Rice ex "State of Madras" — 1.1.56 — Shortlanded.

With reference to your letter of 3rd ultimo in respect of your above short-landed, we would confirm that the said 283 bags were actually short-landed.

We shall therefore be glad to entertain your claim on the above and shall be glad if you will kindly forward us your bill in triplicate together with your Supplier's Invoice also in triplicate in support of same.

Yours faithfully,
(Signed) C. K. Joshi,
Sub-Agent,
Eastern Shipping Corporation Ltd."

On the 9th May, 1956, the agent again wrote to the plaintiffs in the following terms:—

"Dear Sirs,

Your Claim on 283 Bags Rice ex "State of Madras" arrd. 1st and 11th January, 1956.

With reference to your claim on the above we shall be glad if you will kindly furnish us with the Penang Port Commission's Delivery Note of all quantity being delivered to you ex their Godown as these are required

by our Bombay Principal to check up with the Tally Note of the P. Port Commission.

Your early compliance will be much appreciated.

Thanking you.

Yours faithfully,
(Signed) C. K. Joshi,
Sub-Agent,
Eastern Shipping Corpn. Ltd."

Thereafter, the plaintiffs apparently communicated direct with the defendant Corporation in India and received from them two letters dated the 22nd June and 1st August respectively, stating that investigations were in progress regarding the "heavy short-landing".

On the 20th August, the plaintiffs' Solicitors wrote to the defendants in India, stating that the matter had been so long outstanding that their clients "will commence proceedings unless the claim is settled within two weeks from date hereof". The defendants replied to that letter on the 25th August, stating that they had already advised the plaintiffs that investigations regarding this "heavy short-landing" were in progress and that they would be advised about the outcome in due course. The letter concluded with the paragraph:—

"Please note if you still intend taking any legal action it will be entirely at your risk and cost."

Thereafter, nothing further was done until the 30th March, 1957, when the plaintiffs' solicitors again wrote referring to their letter of the 25th August, 1956, and stated that they were instructed to take legal proceedings unless the claim was paid before the 15th April, 1957. The defendants replied on the 4th April, stating that the matter was receiving the attention of their solicitors, and repeating the threat that if the plaintiffs took legal proceedings it would be entirely at their own risk.

There was then further correspondence between the plaintiffs' solicitors and C. K. Joshi, the defendants' Penang agent. The attitude taken by the Penang agent, as evinced by his letter of the 3rd July, was that he had written to his Principals asking them "to expedite early sanction of your . . . . claim", and that he could do nothing further in the matter. The plaintiffs then changed their Solicitors, and on the 12th August, their new Solicitors wrote to R. Jumabhoy & Sons (M) Ltd. the defendants' agents saying that unless payment was made within seven days they would commence legal proceedings.

On the 21st September, the plaintiffs' Solicitors received a reply from the firm of Messrs. Presgrave & Matthews, acting on behalf of the defendants, stating that the letter of the 12th August had been handed to them with instructions to reply thereto. The letter contained a denial of liability and an allegation that the missing bags had never, in fact, been shipped at Madras and that a fraud had been practised by the shippers on the Shipping Company. It is pertinent to observe that that was the first time any such allegation had been put forward. The letter further stated that in the event of the plaintiffs' Solicitors instituting proceedings against the Shipping Company Messrs. Presgrave & Matthews were instructed to plead limitation as — and I quote from the terms of the letter:—

"It is quite clear that more than twelve months have elapsed since the arrival at Penang of the 'State of Madras' or the date when the goods should have been delivered."

The defendants' Solicitors do, of course, act on the instructions given to them by their clients and, in the interests of their clients, must resort to such legal defences as are available. Nevertheless, having regard to the letter dated the 5th April, of Mr. C. K. Joshi, their accredited Penang agent, addressed to the plaintiffs, in which they confirmed "that the said 283 bags were actually short-landed" and asked for their claim and their bill, the defence of limitation raised 17 months later by the defendants when, for the first time, they made an allegation of fraud, seems to me hardly one that commends itself to ordinary principles of commercial integrity and honesty, or likely to inspire trust and confidence in other shippers in their dealings with the defendants, the Eastern Shipping Corporation Ltd. in the future. However, I am not concerned with the morality of the defence, but simply whether the plea of limitation constitutes a valid defence in law.

It is contended by Mr. Hume, for the plaintiffs, that the admission of liability contained in the agent's letter of the 5th April is a valid and binding admission and that the defendants are estopped by that admission from raising the defence of limitation expressly provided by statute and by the conditions of the contract itself, and denying liability. I regret I cannot agree. Article III rule 6 of the Schedule and the condition contained in the Bill of Lading are, in my view, perfectly clear — ". . . the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after . . . . the date when the goods should have been delivered". Even after the admission of liability contained in the letter of the 5th April, the matter was still unsettled when the plaintiffs' Solicitors wrote the letter of the 20th August — 4½ months later — in which they threatened to commence legal proceedings within two weeks unless their claim was settled. Despite that threat, it is clear that nothing further was done until seven months later when the plaintiffs' Solicitors wrote the letter of the 30th August, 1957, again threatening legal pro-

ceedings. The Schedule of the Act and the condition in the Bill of Lading seem to be clear and unequivocal beyond argument. Even after the letter of the 5th April there was lengthy delay in the settlement of the claim and it was, in my view, the clear duty of the plaintiffs, as prudent persons, to enforce their threat of legal proceedings and protect their right of action by issuing a Writ of Summons.

In my view, the plea of limitation must succeed, and I sincerely regret that I have no alternative but to dismiss the action. The defendants are legally entitled to their costs and, with considerable reluctance, I order accordingly.

Claim dismissed.

Solicitors: *Lee Thean-Chu; Presgrave & Matthews.*

CHAO CHONG & ORS. v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Good J.A. and Ismail Khan J.) November 2, 1959]

[K. L. — F.M. Criminal Appeal No. 21 of 1959]

Criminal Law and Procedure — Accomplice — Witness — Test of — Child witness — Risk in acting on uncorroborated evidence of a child.

When the question arises as to whether or not a witness's evidence requires corroboration on the ground that he is an accomplice, the test is not the technical one of whether the witness could have been convicted for his participation in the offence if he had been charged. The true question is, having regard to his participation in the offence and having regard to all the circumstances of the case, is his evidence to be regarded with suspicion and as possibly so tainted as to invite if not to demand corroboration before it is accepted.

The evidence of a child must be regarded with suspicion because it is a matter of common knowledge that children at times find it difficult to distinguish between reality and fantasy. They find it difficult after a lapse of time to distinguish between the results of observation and the results of imagination. Juries should be invited to consider their own experience in connection with stories told by children. It is not sufficient merely to observe that there is a risk in acting on the uncorroborated evidence of a child. It is a sound rule of practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.

Cases referred to:—

(1) *R.* v. *Baskerville* [1916] 2 K.B. 658.

(2) *Mat bin Awang Kechik & Ors.* v. *Public Prosecutor* [1959] M.L.J. 216.

(3) *Umadasi Dasi* v. *Emp.* A.I.R. 1924 Cal. 1031, 1033.

(4) *R.* v. *Ncanana* [1948] 4 S.A.L.R. 399, 405.

(5) *Mohamed Sugal Esa* v. *The King* A.I.R. 1946 P.C. 3, 6.

COURT OF APPEAL.

D. S. Marshall (*E. W. Barker* with him) for the appellants.

Pawan Ahmad bin Ibrahim Rashid (Deputy Public Prosecutor) for the respondent.

Thomson C.J.: These appellants were convicted at Muar for the murder of a man Subramaniam and a woman Chan Chong Moy on Temiang Renchong Estate, Pagoh, on or about 21st September, 1958. They appea'ed against their convictions and on 23rd September, 1959, we allowed their appeals and set their convictions aside.

The dead bodies of Subramaniam and Chan Chong Moy were found at some distance from each other on the estate in question in circumstances which clearly showed they had been killed. The man had a single stab wound in the stomach and the woman had two stab wounds in the chest. Apart from a slight superficial abrasion on the man's neck there were no other external injuries on the bodies.

Except on one point, to which I shall return later, the only evidence as to how the deceased came by their fatal injuries was that of one Ramaya, an Indian boy who said (and this was never questioned) that he was twelve years old. Briefly his evidence, which was given on affirmation, was as follows.

On the afternoon of 20th September he was on his way to the garden of the first appellant to buy vegetables when he came on the third appellant sitting on the ground. Near him the two deceased were tied to trees. They were still alive but they could not talk as they were gagged. He went on his way and later the third appellant came to him at the first appellant's house and told him that if he said anything about what he had seen his life would be in danger.

The following evening the first appellant came to him and told him that there was some work to be done and that he should wait on the Estate football field. He went to the football field where he found the sixth appellant and one Vitalingam. Shortly afterwards a car, number M. 5324, came to the football field driven by the fifth appellant The first, second, third and fourth appellants were in it. The witness got into the car with the sixth appellant and Vitalingam and the whole party went to the first appellant's house where they had a meal, in the course of which the fourth and fifth appellants went away for a time, apparently in the motor-car. When they returned the fourth appellant told the witness that they were going to kill Subramaniam and Chan Chong Moy and asked him to be a sentry. He refused; whereupon the fourth appellant put a knife to his throat and said that if he did not act as a sentry he would be killed. On this he agreed.

The whole party then went to the spot where the witness had seen Subramaniam and Chan Chong Moy tied to trees and found they were still there but had now been tied to neighbouring clumps of bamboos. They were untied and the six appellants took them into some thick bushes. It was then dark but the third appellant had a lamp. Some time later the six appellants returned carrying Chan Chong Moy who was now dead and Subramaniam who was still alive